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September 20, 2006

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VIA EXPRESS MAIL

Commissioner for Trademarks
U.S. Patent and Trademark Office
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, Virginia 22313-1451

Re: *Flowers Bakeries Brands, Inc. v. Independent Marketing Alliance LP*
Opposition No.: 91167151
Our Ref. No.: FI001/321679 78/432642

Dear Sir or Madam:

Enclosed please find **Opposer's Motion for Leave to Amend Notice of Opposition** and **Opposer's Brief in Support of Motion for Leave to Amend Notice of Opposition** in connection with the above-referenced opposition.

Please acknowledge receipt of the enclosures by initialing and dating the enclosed postcard and returning it to me.

Thank you for your assistance.

Sincerely,

Alicia Grahn Jones

AGJ/feg
Enclosures

cc: Ted Davis
Maria Baratta
Holly Kirbo



09-20-2006

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

| | | |
|-----------------------|---|-------------------------------|
| FLOWERS BAKERIES |) | |
| BRANDS, INC., |) | Opposition No. 91167151 |
| |) | |
| Opposer, |) | |
| |) | In the Matter of Application |
| v. |) | Serial No. 78/432642 |
| |) | Mark: COBBLESTONE MARKET |
| INDEPENDENT MARKETING |) | |
| ALLIANCE LP, |) | |
| |) | Filing Date: December 6, 2005 |
| Applicant. |) | Published: September 20, 2005 |

OPPOSER'S MOTION FOR LEAVE TO AMEND NOTICE OF OPPOSITION

Pursuant to Rule 2.107 of the Trademark Rules of Practice and Rule 15(a) of the Federal Rules of Civil Procedure Opposer Flowers Bakeries Brands, Inc. ("Flowers") seeks leave to amend its Notice of Opposition to add two (2) new grounds for refusal of registration, as set forth in its proposed Amended Notice of Opposition, submitted as Exhibit A.

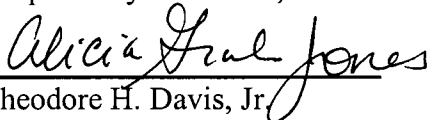
In support of this Motion, and as further explained in the accompanying Brief in Support of Motion for Leave to Amend Notice of Opposition, Flowers recently learned in the deposition of Applicant's President that Applicant does not have a bona fide intent to use certain goods identified in Applicant's application, namely vegetables, deli mustard, and sandwiches. Based on this newly obtained information, justice requires that Flowers be granted leave to amend the Notice of Opposition to add the following two new claims: (1) Applicant does not have a bona fide intent to use certain goods identified in its application; and (2) registration of Applicant's mark is being procured by fraud.

Flowers therefore requests that the Board grant Flowers leave to amend its Notice of Opposition as proposed.

This 20th day of September, 2006.

KILPATRICK STOCKTON LLP
1100 Peachtree Street, Suite 2800
Atlanta, Georgia 30309-4530
Telephone: (404) 815-6500
Fax: (404) 815-6555

Respectfully submitted,


Theodore H. Davis, Jr.
Olivia Maria Baratta
Alicia Grahn Jones

Attorneys for Opposer

CERTIFICATE OF MAILING

I hereby certify that this OPPOSER'S MOTION FOR LEAVE TO AMEND NOTICE OF OPPOSITION is being deposited with the United States Postal Service as Express Mail in an envelope addressed to the Commissioner of Trademarks, Trademark Trial and Appeal Board, P.O. Box 1451, Alexandria, Virginia 22313-1451 on September 20, 2006.


By: 
Alicia Grahn Jones

EXHIBIT A

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

| | | |
|-----------------------|---|-------------------------------|
| FLOWERS BAKERIES |) | |
| BRANDS, INC., |) | Opposition No. 91167151 |
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| ALLIANCE LP, |) | |
| |) | |
| Applicant. |) | Filing Date: December 6, 2005 |
| |) | Published: September 20, 2005 |



AMENDED NOTICE OF OPPOSITION

Opposer, Flowers Bakeries Brands, Inc. ("Flowers"), a Delaware corporation located at 11 North Market Street, Suite 1300, Wilmington, Delaware 19899, will be damaged by registration of Applicant's COBBLESTONE MARKET mark (Serial No. 78/432642) and opposes the same pursuant to 15 U.S.C. § 1063 and 37 C.F.R. §§ 2.101 and 2.104(a). The grounds for opposition are as follows:

1. Applicant Independent Marketing Alliance LP ("Applicant") filed an intent-to-use application to register the mark COBBLESTONE MARKET for "deli meats; cooked deli items, namely, soups, and vegetables; cheese; refrigerated salads except macaroni, rice, and pasta salad; pickles; bagged potato chips, frozen soups; frozen entrees, namely entrees consisting primarily of meat, fish, poultry or vegetables" in International Class 29, and "deli mustard; cooked deli items, namely sandwiches" in International Class 30. Applicant's trademark application was published for opposition in the *Official Gazette* on September 20, 2005.

2. Since at least as early as August 19, 1983, Flowers, its predecessors, and its licensees have used the mark COBBLESTONE MILL in connection with food products, namely bakery products. Since that time, the COBBLESTONE MILL mark has served as an inherently dis-

tinctive indicator of food products, namely bakery products, produced and sold under Flowers' authority. Flowers is the owner of the following federal registrations:

| Mark | Goods | Registration Date |
|---|--|-------------------|
| COBBLESTONE MILL | Bakery products, namely bread, buns and rolls. | August 6, 1996 |
|  | Bakery products-namely, bread, buns and rolls. | March 19, 1985 |
|  | Bakery products. | September 9, 2003 |

3. Over the last several decades, Flowers has expended considerable sums of money into developing consumer brand recognition for the COBBLESTONE MILL marks.

4. As a result of widespread advertising and promotion by Flowers and its licensees, Flowers' COBBLESTONE MILL marks have acquired a high degree of recognition, fame, and distinctiveness as a symbol of the high quality food products, namely bakery products, offered by Flowers and its licensees prior to the filing date of Applicant's application. The public and retail buyers are familiar with and identify Flowers' marks with Flowers, and, by reason of this identification, goods associated with the marks are understood by the public and trade to be produced, marketing, and supplied under Flowers' authority or otherwise derived from Flowers.

5. Flowers' COBBLESTONE MILL marks are an important factor employed by the public in identifying the source of Flowers' and its licensees' products and are distinctive of those products.

6. Flowers' COBBLESTONE MILL marks also are used on bakery products that are sold in grocery stores in the United States, including in Texas, Louisiana, Alabama, Arkansas, Florida, Georgia, Mississippi, North Carolina, Tennessee, Virginia, New Mexico, Missouri, Ohio, Oklahoma, South Carolina, Kentucky, West Virginia, Maryland, and Washington D.C.

7. As a result of these and other uses, the COBBLESTONE MILL marks are entitled to a broad scope of protection.

8. On or about June 9, 2004, Applicant filed an application to register the mark COBBLESTONE MARKET on the Principal Register. This application was assigned Serial No. 78/432,642. On information and belief, Applicant plans to sell its food products, including sandwiches, in at least some of the same states where Flowers' food products, namely bakery products, also are sold.

9. The marks at issue both incorporate the identical term COBBLESTONE followed by one word that begins with the letter M. The marks therefore are similar with respect to appearance, pronunciation, and commercial impression. On information and belief, like Flowers' family of COBBLESTONE MILL marks, Applicant's proposed mark would be used in connection with food products including sandwiches regularly consumed by the public.

10. The relevant public is likely to be confused into believing that Applicant's food products, including sandwiches, as offered under the mark COBBLESTONE MARKET, emanate from Flowers, or are authorized, licensed, endorsed, or sponsored by Flowers. Registration of Applicant's mark on the Principal Register thus would be inconsistent with Flowers' prior rights in its family of well-known COBBLESTONE MILL marks.

11. Flowers will be damaged by registration of Applicant's mark COBBLESTONE MARKET because it so resembles Flowers' previously used, federally registered, and well-

known COBBLESTONE MILL marks as to be likely, when used on or in connection with the food products including sandwiches identified in application Serial No. 78/342,642, to cause confusion, or to cause mistake, or to deceive in violation of Section 2 of the Lanham Act, 15 U.S.C. § 1052.

12. Flowers will be damaged by registration of Applicant's mark COBBLESTONE MARKET because that mark dilutes and is likely to dilute the distinctiveness of Flowers' famous COBBLESTONE MILL marks by eroding consumers' exclusive identification of these marks with Flowers, and/or by tarnishing and degrading the positive associations and prestigious connotations of the famous COBBLESTONE MILL marks, and/or by otherwise lessening the capacity of Flowers' COBBLESTONE MILL marks to identify and distinguish the goods of Flowers and its licensees.


13. Flowers further objects to registration of Applicant's mark on the grounds that Applicant does not have a bona fide intent to use the mark in connection with certain goods identified in Application Serial No. 78/432642, that is "vegetables" in International Class 29; and "deli mustard" and "sandwiches" in International Class 30.

14. Flowers further objects to registration of Applicant's mark on the ground that it is being procured by fraud. Specifically, Applicant did not have a bona fide intent to use the mark in connection with certain goods identified in the application, namely "vegetables" in International Class 29; and "deli mustard" and "sandwiches" in International Class 30, as of the filing date of the application.

WHEREFORE, Flowers requests that registration of the mark that is the subject of application Serial No. 78/432,642 be refused, and this Notice of Opposition be sustained in favor of Flowers.

This 20th day of September, 2006.

Respectfully submitted,



Theodore H. Davis Jr

Olivia Maria Baratta

Alicia Grahn Jones

KILPATRICK STOCKTON LLP

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Atlanta, Georgia 30309-4530

Tel: (404) 815-6500

Fax: (404) 815-6555

Attorneys for Applicant

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

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| FLOWERS BAKERIES |) | |
| BRANDS, INC., |) | Opposition No. 91167151 |
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| ALLIANCE LP, |) | |
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**OPPOSER'S BRIEF IN SUPPORT OF MOTION
FOR LEAVE TO AMEND NOTICE OF OPPOSITION**

Pursuant to Rule 2.107 of the Trademark Rules of Practice and Rule 15(a) of the Federal Rules of Civil Procedure Opposer Flowers Bakeries Brands, Inc. ("Flowers") submits this Brief in Support of Motion for Leave to Amend Notice of Opposition. Flowers seeks leave to amend its Notice of Opposition to add the following two new claims: (1) Applicant does not have a bona fide intent to use certain goods identified in its application; and (2) registration of Applicant's mark is being procured by fraud.

I. BACKGROUND

On June 4, 2004, Applicant filed an intent-to-use application to register the mark COBBLESTONE MARKET (Serial No. 78/432642). On August 2, 2005, Applicant amended the identification of goods to include "vegetables" in International Class 29 and "sandwiches" in International Class 30. On September 30, 2005, Applicant's trademark application was published for opposition in the *Official Gazette*. On October 19, 2005, Flowers filed a Notice of Opposition against Applicant alleging that Applicant's COBBLESTONE MARKET mark (1) so resembles Flowers' previously used, family of registered COBBLESTONE MILL marks as to be

likely to cause consumer confusion, mistake and deception, and (2) is likely to dilute the distinctiveness of Flowers' famous COBBLESTONE MILL marks by eroding consumers' exclusive identification of these marks with Flowers, and/or by tarnishing and degrading the positive associations and prestigious connotations of the famous COBBLESTONE MILL marks, and/or by otherwise lessening the capacity of Flowers' COBBLESTONE MILL marks to identify and distinguish the goods of Flowers and its licensees. Only recently in the deposition of Applicant's President has it come to Flowers' attention that there exist two additional independent grounds for the Board to refuse registration of Applicant's mark: (1) Applicant does not have a bona fide intent to use certain goods identified in its application; and, as a consequence (2) registration of Applicant's mark is being procured by fraud.

Specifically, as reflected in Exhibit A, Applicant's responses to Opposer's Interrogatory No. 4 confirm that Opposer does not have a bona fide intent to use its mark in connection with at least some of the goods recited in its application, namely, sandwiches:

4. Describe the typical or target customer to whom Applicant intends to offer or is offering goods under the Opposed Mark.

ANSWER

....
Our client sells Deli Meats, Cheeses, Pickles, Prepared Salads, grab and go chips and Soups under the COBBLESTONE MARKET brand. *There is no intention to sell sandwiches under this brand*, but the sandwich may include branded Deli Meats, Cheeses and Pickles as components of such a sandwich.

(emphasis added).

Moreover, as reflected in the deposition transcription excerpts attached as Exhibit B, recent testimony by Applicant's president, Robert D. Planck, suggests that Applicant *never* had such an intent:

Q. . . . What about the sandwiches, the last item?

A. Well, we don't sell sandwiches prepared, we never have, under any brand of our own. . . . And, you know, frankly, I added in this thing as to some point . . . as an afterthought, gee, someday we might sell sandwiches. The fact is, we don't, we have no intention to produce sandwiches

(Planck Dep. at 49.) Moreover, that testimony also raises questions about Applicant's bona fide intent to use its mark in connection with other goods recited in its application as well, namely, vegetables and deli mustard:

Q. . . . [D]oes the company ultimately intend to sell vegetables as a separate item?

A. Not under this brand.

....

Q. . . . Let's jump to the next class of goods, deli mustard. How would you provide that to your customers?

A. Well, in this class of goods, it was probably an afterthought of, gee, we might do that some day.

(Planck Dep. at 45, 47.) Based on this recent testimony, Flowers should be afforded the opportunity to amend its Notice of Opposition.

II. FLOWERS SHOULD BE GRANTED LEAVE TO AMEND THE NOTICE OF OPPOSITION

Pleadings in an opposition proceeding may be amended in the same manner and to the same extent as in a civil action. 37 C.F.R. § 2.107. Rule 15(a) of the Federal Rules of Civil Procedure provides that a party may amend its pleading by leave of court, which should be freely given when justice so requires. Fed. R. Civ. P. 15(a). The Trademark Trial and Appeal Board Manual of Procedure provides that "the Board liberally grants leave to amend pleadings at any stage of a proceeding when justice so requires, unless entry of the proposed amendment would violate settled law or be prejudicial to the rights of the adverse party or parties." TBMP § 507.02; *see also Commodore Elecs. Ltd. v. CBM Kabushiki Kaisha*, 26 U.S.P.Q.2d 1503, 1505 (T.T.A.B. 1971) (granting leave to include a claim that applicant lacks a bona fide intent to use the mark in commerce). Neither circumstance exists here.

A. Justice Requires that Flowers be Permitted to Amend its Notice of Opposition

Opposition is proper where Applicant does not have a bona fide intent to use the mark in connection with the identified goods or services. *See Commodore*, 26 U.S.P.Q.2d at 1508 (granting opposer's motion to amend notice of opposition to add a claim that applicant lacks a bona fide intention to use the mark in commerce). In filing under section 1(b) and then amending its application, Applicant declared that it had a bona fide intent to use the COBBLESTONE MARKET mark in connection with "deli meats; cooked deli items, namely, soups, and vegetables; cheese; refrigerated salads except macaroni, rice, and pasta salad; pickles; bagged potato chips, frozen soups; frozen entrees, namely, entrees consisting primarily of meat, fish, poultry or vegetables" in International Class 29 and "Deli mustard; cooked deli items, namely, sandwiches" in International Class 30. Applicant's discovery responses and the testimony of its President, however, establish that the requisite intent is missing with respect "vegetables," "sandwiches," and "deli mustard." Thus, justice requires that Flowers be permitted to amend its Notice of Opposition to include a claim based on Applicant's lack of a bona fide intent to use certain goods identified in its application.

Additionally, "[f]raud in procuring a trademark registration or renewal occurs when an applicant knowingly makes false, material representations of fact in connection with his application." *Torres v. Cantine Torresella S.r.l.*, 808 F.2d 46 (Fed. Cir. 1986). Here, rather than having a bona fide intent to use its mark with vegetables, sandwiches, and deli mustard at the time its incorporated those goods into its application, Applicant took that step only "as an afterthought" and to hedge against the possibility that Applicant "might" sell the goods "some day." Because this conduct is flatly inconsistent with the averments required under section 1(b),

justice requires that Flowers be permitted to amend its Notice of Opposition to add a claim alleging fraud.

B. Flowers has not Unduly Delayed in Seeking Leave to Amend, and Applicant Will Not be Prejudiced by any Delay

In determining whether the proposed amendment is prejudicial, an important factor for consideration is the timing of the motion for leave to amend. TBMP § 507.02; *see also Boral Ltd. v. FMC Corp.*, 59 U.S.P.Q.2d 1701, 1703-04 (T.T.A.B. 2000) (finding no undue delay where motion to add claim of dilution was filed two years after commencement of the proceeding because the motion was promptly filed after such claim became available); *Commodore*, 26 U.S.P.Q.2d at 1505-06 (finding no undue delay prejudicing applicant where opposer moved for leave to amend pleadings in view of pending motions for summary judgment and discovery was still open when the motion was filed); *Focus 21 Int'l Inc. v. Pola Kasei Kogyo Kabushiki Kaisha*, 22 U.S.P.Q.2d 1316, 1318 (T.T.A.B. 1992) (finding no prejudice where petitioner filed motion to amend prior to opening of petitioner's testimony period).

Flowers first learned of Applicant's lack of a bona fide intent to use its mark in connection with certain goods identified in Applicant's application, and confirmed the lack of such an intent as to others, during the deposition of Robert D. Planck on August 22, 2006. This motion is being promptly filed after Flowers' discovery of this information and its subsequent receipt and review of the deposition transcript. Applicant will not be prejudiced by the introduction of the new theories of relief recited in Flowers' Amended Notice of Opposition because any information necessary to respond to those theories is exclusively within Applicant's possession already and will not require discovery from Flowers or from any third parties.

Moreover, it will not be necessary to reschedule the testimony periods in this litigation because neither party has taken any testimony in this proceeding; therefore, permitting Flowers to amend its Notice of Opposition will not significantly delay the trial of this case.

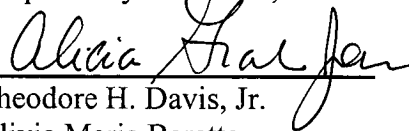
III. CONCLUSION

For the reasons stated above, Flowers respectfully requests that the Board grant Flowers' Motion for Leave to Amend Notice of Opposition and allow Flowers to amend the Notice of Opposition as proposed.

This 20th day of September, 2006.

KILPATRICK STOCKTON LLP
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Atlanta, Georgia 30309-4530
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Fax: (404) 815-6555

Respectfully submitted,



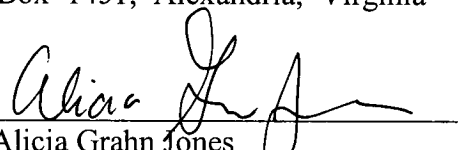
Theodore H. Davis, Jr.
Olivia Maria Baratta
Alicia Grahn Jones

Attorneys for Opposer
Flowers Bakeries Brands, Inc.

CERTIFICATE OF MAILING

I hereby certify that this OPPOSER'S BRIEF IN SUPPORT OF MOTION FOR LEAVE TO AMEND NOTICE OF OPPOSITION is being deposited with the United States Postal Service as Express Mail in an envelope addressed to the Commissioner of Trademarks, Trademark Trial and Appeal Board, P.O. Box 1451, Alexandria, Virginia 22313-1451 on September 20, 2006.

By:



Alicia Grahn Jones

EXHIBIT A

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

| | | |
|--------------------------------|---|-------------------------|
| FLOWERS BAKERIES BRANDS, INC., |) | |
| |) | |
| Opposer, |) | Opposition No. 91167151 |
| |) | |
| v. |) | Serial No. 78/432,642 |
| |) | |
| INDEPENDENT MARKETING |) | Published 9/20/2005 |
| ALLIANCE LP, |) | |
| |) | |
| Applicant. |) | |

**APPLICANT'S ANSWERS TO OPPOSER'S
FIRST SET OF INTERROGATORIES**

Applicant Distribution Marketing Services, L.P., f/k/a Independent Marketing Alliance, LP ("Applicant") answers to Opposer's First Set of Interrogatories in the above and styled opposition as follows:

ANSWERS TO INTERROGATORIES

1. Identify each Person involved in Applicant's selection, adoption, clearance, or first use of the Opposed Mark, and describe each such Person's knowledge thereof.

ANSWER

Robert Fontana
Bob Planck
Independent Marketing Alliance
c/o Pagel, Davis & Hill, P.C.

Rob Ahrens Dorf
Rob Goluba
Ed Sanford
Ceil Enault
Phil Morgan
Stephen Krefft
Brent Cady
c/o Pagel, Davis & Hill, P.C.

All are employees of Independent Marketing Alliance Member Companies and representative of those companies to the Marketing Advisory Council

of Independent Marketing Alliance.

Sandy Klein
Barb Walker
Newhall Klein, Inc.

Bartt G. Thompson
Pagel, Davis & Hill, P.C.

2. Describe the procedure by which Applicant selected the Opposed Mark, including all steps taken by Applicant to determine whether the Opposed Mark was available for use before filing Application Serial No. 78/432,642.

ANSWER

Responsive documents are being produced which demonstrate the procedures utilized to consider various Marks including the Opposed Marks, and efforts to avoid use of any mark likely to cause confusion. A trademark search was conducted through Independent Marketing Alliance ad agency Newhall Klein, Inc., and recommendations were based on the review of the search.

3. List each separate product on or in connection with which Applicant is using or intends to use the Opposed Mark.

ANSWER

Foodservice Pack Sizes of Deli Meats, Foodservice Pack Sizes of Cheeses, Food Service Pack Sizes of Pickles, Foodservice Pack Sizes of condiments, Prepared Salads, grab and go chips and Soups Also, see Application and other documents being produced by Applicant, including promotional materials related to same.

4. Describe the typical or target customer to whom Applicant intends to offer or is offering its goods under the Opposed Mark.

ANSWER

Regarding customer types, our client is not in the bread business and has no intention of entering the bread business. Our client focuses on foodservice with sales to the hospitality industry, not retailers like grocery stores. It is not intended and would be highly unlikely for a consumer to find COBBLESTONE MARKET branded products on grocery store aisles or in "coffin" cases. However, some grocery stores now have foodservice/deli operations within their

stores. Also, foodservice/deli operations may display this brand to enhance their operations.

Our client sells Deli Meats, Cheeses, Pickles, Prepared Salads, grab and go chips and Soups under the COBBLESTONE MARKET brand. There is no intention to sell sandwiches under this brand, but the sandwich may include branded Deli Meats, Cheeses and Pickles as components of such a sandwich.

5. Identify the geographic region where Applicant or its distributors, agents or sales representatives has sold, offered for sale, or intends to offer for sale its goods that currently bear the Opposed Mark.

ANSWER

Geographically, current sales involve a large geographical territory. It would not be practical to limit sales to any particular locality, as our client intends on selling or at least having the right to sell throughout the entire United States.

6. Describe through what media (i.e. television, radio, newspapers, magazines, brochures, Internet, etc.) Applicant has advertised or intends to advertise or promote products under the Opposed Mark.

ANSWER

Internal point of sale material designed for use on a one on one basis by sales personnel in presenting to individual operator accounts and in internal sales publication of Independent Marketing Alliance member companies, as well as promotional publication of those companies targeted to end user "business to business" accounts.

7. Identify each Person currently or previously employed or engaged by Applicant who has participated or will participate in the creation or placement of advertisements or promotional material for the products sold or intended to be sold under the Opposed Mark.

ANSWER

Robert Fontana
Bob Planck
Independent Marketing Alliance

Ed Sanford
Rob Ahrens Dorf
Brent Cady

EXHIBIT B

1 IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
2 BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

2

FLOWERS BAKERIES BRANDS,)
3 INC.,)
Opposer,) In the Matter of Application
4) Serial No. 78/432642
vs.) Mark: COBBLESTONE MARKET
5)
INDEPENDENT MARKETING) Opposition No. 91167151
6 ALLIANCE LP,)
Applicant.)

7

8

9

ORAL 30(b)(6) DEPOSITION

10

ROBERT D. PLANCK

11

August 22, 2006

12

13

ORAL 30(b)(6) DEPOSITION OF ROBERT D. PLANCK,
14 produced as a witness at the instance of the Opposer and
15 duly sworn, was taken in the above-styled and numbered
16 cause on the 22nd day of August, 2006, from 9:12 a.m. to
17 12:00 noon, before Laraine L. Toliver, Certified
18 Shorthand Reporter in and for the State of Texas,
19 reported by computerized stenotype machine at the
20 offices of Pagel, Davis & Hill, PC, 1415 Louisiana, 22nd
21 Floor, Houston, Texas 77002, pursuant to the Federal
22 Rules of Civil Procedure and the Trademark Rules of
23 Practice.

24

25

ORIGINAL

1 somehow. It's a different wording anyway.

2 Q. Okay. Let me make sure I understand. When you
3 used the word "component" initially -- and I'll pick one
4 of the examples you gave, vegetables -- does the
5 company ultimately intend to sell vegetables as a
6 separate item?

7 A. Not under this brand.

8 Q. Okay. So, if -- if vegetables were to be
9 provided as part of this program, they would be, for
10 example, a component of the entree?

11 A. Of beef stew with carrots in it or a salad with
12 carrot and raisin, as an example, would have vegetables.

13 Q. Okay. There is a reference to refrigerated
14 salads.

15 A. Uh-huh.

16 Q. Would those be sold separately as a branded
17 item?

18 A. They are in bulk food service packs, namely,
19 one gallons, I think, and they're sold business to
20 business to food service operators or deli operators,
21 but not sold as units to consumers.

22 Q. Okay. But tuna, tuna salad, might be an
23 example of that?

24 A. It could be, yes. We do have a tuna and a
25 chicken salad, Cobblestone Market prepared salad item

1 Q. What about the pickles?

2 A. The pickles are sold in bulk containers,
3 gallons or five-gallon pails.

4 Q. Okay. The bagged potato chips, would they --
5 would they arrive at your customers bearing the
6 Cobblestone Market trademark?

7 A. Yes, they would.

8 Q. Okay. So the bag itself would --

9 A. Yes, they would --

10 Q. Okay.

11 A. -- bear the trademark.

12 Q. What about frozen soups?

13 A. Frozen soups are also bulk food service
14 concentrated, not individual portion control, and they
15 do arrive bearing Cobblestone Market brand.

16 Q. Okay. And what about the frozen entrees?

17 A. We have not yet introduced that product line,
18 but it would be the same.

19 Q. Okay. Let's jump to the next class of goods,
20 deli mustard. How would you provide that to your
21 customers?

22 A. Well, in this class of goods, it was probably
23 an afterthought of, gee, we might do that some day. We
24 actually do not sell deli mustard at all currently. We
25 have not introduced that product.

1 members.

2 Q. Okay. What about the sandwiches, the last
3 item?

4 A. Well, we don't sell sandwiches prepared, we
5 never have, under any brand of our own. Sara Lee does
6 sell prepared sandwiches. And, you know, frankly, I
7 added in this thing at some point with Bartt as an
8 afterthought, gee, some day we might sell sandwiches.
9 The fact is we don't, we have no intention to produce
10 sandwiches and, as I've specified previously, we're
11 willing to forego that category completely.

12 Q. Okay. So, for sandwiches, the company might
13 provide the components for a sandwich?

14 A. It's possible an operator would buy all the
15 components for a sandwich, including Flowers breads
16 distributed through our companies.

17 Q. Okay.

18 A. But I don't believe Cobblestone Mills is one of
19 those brands distributed through our companies.

20 Q. But the bread, the bread that would be used,
21 would be bread coming from another company that was not
22 one of your licensees?

23 A. The bread an operator might use could be from
24 any source they procured it from. They aren't -- none
25 of them are required in selling Cobblestone Market to